

Federal Rules of Civil Procedure (FRCP) Rules Matrix

Rule Name	Rule Description	What It Means	How Does ZL Help?
Rule 16(b)(5)&(6) Pretrial Conferences; Scheduling; Management	<p>16(b) Scheduling and Planning. Except in categories of actions exempted by district court rule as inappropriate, the district judge, or a magistrate judge when authorized by district court rule, shall, after receiving the report from the parties under Rule 26(f) or after consulting with the attorneys for the parties and any unrepresented parties by a scheduling conference, telephone, mail, or other suitable means, enter a scheduling order that limits the time (for various tasks). The scheduling order also may include:</p> <p>(5) provisions for disclosure or discovery of electronically stored information;</p> <p>(6) any agreements the parties reach for asserting claims of privilege or of protection as trial preparation material after production</p>	<p>After the initial 26(f) report and discussion with representative attorneys, the judge shall schedule time for disclosure and discovery of all electronic data along with discussion of any agreements detailing claims for attorney client privilege or claims of protection.</p>	<p>ZL Attorney Client Privilege Tagging and Automated Records Classification: These technologies shorten the time required to prepare for these discussions. Further, policies can be easily added to automatically flag new incoming mails and their attachments to minimize time spent on future discussions as well as reduce the total amount of material attorneys must wade through in preparation for these discussions.</p>
Rule 26(a): General Provisions Governing Discovery; Duty of Disclosure; Required Disclosures; Methods to Discover Additional Matter	<p>16(b) Scheduling and Planning. (a) Required Disclosures; Methods to Discover Additional Matter.</p> <p>(1) Initial Disclosures. Except in categories of proceedings specified in Rule 26(a)(1)(E), or to the extent otherwise stipulated or directed by order, a party must, without awaiting a discovery request, provide to other parties:</p> <p>(b) a copy of, or a description by category and location of, all documents, electronically stored information, and tangible things that are in the possession, custody, or control of the party and that the disclosing party may use to support its claims or defenses, unless solely for impeachment;</p>	<p>Parties must voluntarily provide information regarding the location of any relevant, electronically stored information that will be used to support its case, effectively an evidence inventory. This includes a description and location of any emails, documents, or files (e.g. hard drives, back-up tapes from specific date ranges, etc.)</p>	<p>ZL Auto-Classification, Unified Vault Storage and Unified Search ZL enables firms to automatically store all data into a single centralized archive under their complete control. Navigation and scanning of this archive is easily done with ZL's fast and efficient discovery tools so that general counsel can quickly "know their hand" by locating any related evidence.</p> <p>ZL's ability to scale its archive enables firms to eliminate its tape or optical disc library, instead placing all information on low cost, tier 2 or 3 online disc storage which combines fast retrievability and rapid discovery.</p> <p>ZL can also generate a report summary of this material and print out a summary list of records without disclosing the full contents of the data.</p>
Rule 26(b)(2)(B): General Provisions Governing Discovery; Duty of Disclosure; Discovery Scope and Limits;	<p>26(b)(2)(B): (b) Discovery Scope and Limits. Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows:</p> <p>(2) Limitations.</p>	<p>A party may find that some electronically stored information is too difficult or costly to access due to where it is stored (e.g. tapes) or how it is stored (e.g. unknown formats). Under certain conditions the court may not require for these types of data to be produced.</p>	<p>ZL Data Capture and Ingestion Technology ZL enables customers to consolidate email and other messaging data located on various storage devices by ingesting such data natively or in the form of PSTs, NSFs, MIME, or even proprietary formats (other archival solutions, various hardware storage devices, including WORM devices).</p>



(B) A party need not provide discovery of electronically stored information from sources that the party identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the party from whom discovery is sought must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(C) The frequency or extent of use of the discovery methods otherwise permitted under these rules and by any local rule shall be limited by the court if it determines that:

- (i) the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive;
- (ii) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or
- (iii) the burden or expense of the proposed discovery outweighs its likely benefit, taking into account the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the litigation, and the importance of the proposed discovery in resolving the issues. The court may act upon its own initiative after reasonable notice or pursuant to a motion under Rule 26(c).

Rule 26(b)(5)(B): General Provisions Governing Discovery; Duty of Disclosure; Discovery Scope and Limits; Claims of Privilege or Protection of Trial-Preparation Materials; Information Produced

26(b)(2)(B):
(b) Discovery Scope and Limits.
Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows:

- (5) Claims of Privilege or Protection of Trial-Preparation Materials.
(B) Information Produced. If information is produced in discovery that is subject to a claim of privilege or of protection as trial-preparation material, the party making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The producing party must preserve the information until the claim is resolved.

This section helps protect producing parties where evidence produced during discovery is later identified as being privileged information. 26(b)(5)(B) requires that the recipient of privileged information must take reasonable steps to return or destroy the material and if disclosed prior to notification of privilege they must also take reasonable steps to retrieve

ZL Policy-based Attorney Client Privilege Flagging and Automated Privilege Log Generation
ZL's Discovery Suite provide the ability to create policies that will automatically flag items for attorney client privilege based on e-mail or file contents, senders and recipients, or any aspect of the e-mail. ZL also allows for manual flagging. Upon export, all privilege-flagged mails will generate a privilege log record and be exported as a privileged dataset, apart from the responsive dataset.



**Rule 26(f)(3) & (4):
General Provisions Governing
Discovery; Duty of Disclosure;
Conference of Parties; Planning
for Discovery**

(f) Conference of Parties; Planning for Discovery. Except in categories of proceedings exempted from initial disclosure under Rule 26(a)(1)(E) or when otherwise ordered, the parties must, as soon as practicable and in any event at least 21 days before a scheduling conference is held or a scheduling order is due under Rule 16(b), confer to consider the nature and basis of their claims and defenses and the possibilities for a prompt settlement or resolution of the case, to make or arrange for the disclosures required by Rule 26(a)(1), to discuss any issues relating to preserving discoverable information, and to develop a proposed discovery plan that indicates the parties' views and proposals concerning:

(3) any issues relating to disclosure or discovery of electronically stored information, including the form or forms in which it should be produced;

(4) any issues relating to claims of privilege or of protection as trial-preparation material, including — if the parties agree on a procedure to assert such claims after production — whether to ask the court to include their agreement in an order;

For the purposes of planning discovery, parties must agree beforehand on the format in which electronically stored data shall be produced (e.g. PSTs, MIME, etc.)

Parties must also agree on a procedure for declaring claims of privilege or protection including claims after production.

ZL Open Standard Format Export

ZL's Discovery Suite supports export of data in a variety of formats, including open standard MIME, PSTs, NSFs, etc.

This ensures that all standard forms of delivery are supported.

And as related attorney client privilege, ZL's powerful and accurate automated flagging helps to avoid such mistakes and further costs.

**Rule 33(d):
Interrogatories to Parties;
Option to Produce
Business Records**

Rule 33. Interrogatories to Parties

(d) Option to Produce Business Records.

Where the answer to an interrogatory may be derived or ascertained from the business records, including electronically stored information, of the party upon whom the interrogatory has been served or from an examination, audit or inspection of such business records, including a compilation, abstract or summary thereof, and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served, it is a sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and to afford to the party serving the interrogatory reasonable opportunity to examine, audit or inspect such records and to make copies, compilations, abstracts, or summaries. A specification shall be in sufficient detail to permit the interrogating party to locate and to identify, as readily as can the party served, the records from which the answer may be ascertained.

This rule allows a party responding to an interrogator by simply specifying the electronic records from which the answer may be found. Enough detail to identify and locate the appropriate records should be provided.

**ZL Web-based Search and Discovery UI, and
Role-based Controls and Authentication**

ZL's Discovery Suite supports the ability to provide sufficient, specific, and controlled/audited access to its search and discovery application and stored electronic data such as emails.

The discovery application is web-based and accessible securely from any location with sufficient authentication privileges. This ensures the ability to identify the appropriate, responsive data in a timely manner (e.g. 30 days). If so desired, a firm may provide restricted controlled access to a specific dataset to any user they provide sufficient access rights. Alternatively, the responding firm may produce data (e.g. emails) in a wide range of open standard formats.



**Rule 34(a) & (b):
Production of Documents,
Electronically Stored Information,
and Things and Entry Upon Land
for Inspection and Other Purposes**

Rule 34. Production of Documents, Electronically Stored Information, and Things and Entry Upon Land for Inspection and Other Purposes

(a) Scope.

Any party may serve on any other party a request (1) to produce and permit the party making the request, or someone acting on the requestor's behalf, to inspect, copy, test, or sample any designated documents or electronically stored information — including writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations stored in any medium from which information can be obtained — translated, if necessary, by the respondent into reasonably usable form, or to inspect, copy, test, or sample any designated tangible things which constitute or contain matters within the scope of Rule 26(b) and which are in the possession, custody or control of the party upon whom the request is served; or (2) to permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon, within the scope of Rule 26(b).

(b) Procedure.

The request shall set forth, either by individual item or by category, the items to be inspected, and describe each with reasonable particularity. The request shall specify a reasonable time, place, and manner of making the inspection and performing the related acts. The request may specify the form or forms in which electronically stored information is to be produced. Without leave of court or written stipulation, a request may not be served before the time specified in Rule 26(d). The party upon whom the request is served shall serve a written response within 30 days after the service of the request. A shorter or longer time may be directed by the court or, in the absence of such an order, agreed to in writing by the parties, subject to Rule 29. The response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to, including an objection to the requested form or forms for producing electronically stored information, stating the reasons for the objection. If objection is made to part of an item or category, the part shall be specified and inspection permitted of the remaining parts. If objection is made to the requested form or forms for producing electronically stored information — or if no form was specified in the request — the responding party must state the form or forms it intends to use. The party submitting the request may move for an order

This provision permits a party to request to copy, test, inspect any documents or electronically stored information in a usable form.

The process by which the request is made requires the items to be inspected be described/requested with reasonable specificity.

Within 30 days, a written response to the request must be made by the responding party. The response time may be shortened or lengthened by the court or by agreement between the two parties. The responding party may also object to the request and should be specific about the particular data being objected to and respond with all other data.

The requesting party may request the data in particular format and the producing party should produce the data organized and in a format typically used in the normal course of business.

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The discovery application is web-based and accessible securely from any location with sufficient authentication privileges. This ensures the ability to identify the appropriate, responsive data in a timely manner (e.g. 30 days).

If so desired, a firm may provide restricted controlled access to a specific dataset to any user they provide sufficient access rights.

Alternatively, the responding firm may produce data (e.g. emails) in a wide range of open standard formats.



	<p>under Rule 37(a) with respect to any objection to or other failure to respond to the request or any part thereof, or any failure to permit inspection as requested. Unless the parties otherwise agree, or the court otherwise orders:</p> <p>(i) a party who produces documents for inspection shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the request;</p> <p>(ii) if a request does not specify the form or forms for producing electronically stored information, a responding party must produce the information in a form or forms in which it is ordinarily maintained or in a form or forms that are reasonably usable; and</p> <p>(iii) a party need not produce the same electronically stored information in more than one form.</p>		
<p>Rule 37(f): Failure to Make Disclosures or Cooperate in Discovery; Sanctions; Electronically Stored Information.</p>	<p>Rule 37. Failure to Make Disclosures or Cooperate in Discovery; Sanctions (f) Electronically Stored Information. Absent exceptional circumstances, a court may not impose sanctions under these rules on a party for failing to provide electronically stored information lost as a result of the routine, good-faith operation of an electronic information system.</p>	<p>This new sub-section restricts a court from imposing sanctions upon a party for failing to provide electronically stored information lost as a result of "routine, good-faith operation of an electronic information system." This is the "Safe Harbor" provision.</p> <p>A close review of the meaning of "good-faith" is critical. This includes examination of the party's standard policies for retention, timely and proper preservation of data, timely and appropriate application of litigation holds, and consistent application of all such policies against archived data.</p> <p>Analysis of these policies and application of these policies shall be made to validate "good-faith."</p> <p>It should be noted that as broad as "good-faith" exceptions may seemingly provide, 37(f): 1) does not prevent the court from imposing sanctions under "exceptional circumstances;" 2) falls under federal guidelines and may not apply within state based proceedings; 3) does not prohibit the court from using its powers to apply sanctions in a non rule-based manner.</p>	<p>ZL Unified Vault Storage, Unified Retention Policy Management, Policy-based Attorney Client Privilege, and Legal Hold Tagging ZL enables firms to automatically store all data into a single centralized archive under their complete control.</p> <p>Policies for the retention and disposition of all data is controlled centrally at a global, department, user, and content level.</p> <p>ZL also provides integrated Attorney Client Privilege Tagging and Legal Hold Tagging both by automated policy as well as manual application.</p> <p>With full auditing capability, all policies, all tagging, legal holds, retentions and otherwise are fully tracked and logged to demonstrate proper, routine operation towards establishing "good-faith."</p>



<p>Rule 45(a)(1)(C) & (D): Subpoena; Form; Issuance.</p>	<p>Rule 45. Subpoena (a) Form; Issuance.</p> <p>(1) Every subpoena shall</p> <p>(C) command each person to whom it is directed to attend and give testimony or to produce and permit inspection, copying, testing, or sampling of designated books, documents, electronically stored information, or tangible things in the possession, custody or control of that person, or to permit inspection of premises, at a time and place therein specified; and</p> <p>(D) set forth the text of subdivisions (c) and (d) of this rule. A command to produce evidence or to permit inspection, copying, testing, or sampling may be joined with a command to appear at trial or hearing or at deposition, or may be issued separately. A subpoena may specify the form or forms in which electronically stored information is to be produced.</p>	<p>This rule allows subpoenas to compel the production of electronically stored information along with the format in which it should be produced.</p>	<p>ZL Open Standard Format Export ZL's Discovery Suite supports export of data in a variety of formats, including open standard MIME, PSTs, NSFs, etc.</p> <p>This ensures that all standard forms of delivery are supported.</p> <p>And as related attorney client privilege, ZL's powerful and accurate automated tagging helps to avoid such mistakes and further costs.</p>
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